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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/599,204

09/22/2006

Claus Biller

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EXAMINER

HELVEY, PETER N.

ART UNIT

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3782

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/599,204	<b>Applicant(s)</b> BILLER ET AL.	
	<b>Examiner</b> PETER HELVEY	<b>Art Unit</b> 3782	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 7/19/2011.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 5) ☒ Claim(s) 5-8 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 5-8 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Totani (US 2004/0258332 A1) in view of Wedi et al. (US 2001/0051008 A1, hereinafter 'Wedi 008') and Wedi et al. (US 2003/0210837 A1, hereinafter 'Wedi 837').

Totani discloses a gusseted bag (Fig 1) comprised of a flexible, multi-layer film wherein only the inner layer is fusible ([0036] and [0042]), having a bottom end, a top end, gussets on the sides (1), the bag walls being fused with the gussets and above the top edges of the gussets, the top edges of the gussets being folded over at an inwardly and downwardly slanting folding line, the inner layer of the folded area being fused to itself along a first welding seam (Fig 5, 16), the outer side being sealed neighboring bag wall with a second welding seam (along edge) and the inner side of the film sealed to a wall along a third welding seam (at 17), the welding seams forming a fused connection that includes the top edges so that the top edges are closed, the end areas being folded toward the rear wall and a closure device being a reclosable closure device (7) extending above the folded over areas across the entire bag width.

Totani does not expressly disclose the top edges extending toward the bottom at a second slant inwardly and downwardly. However, Wedi 008 teaches that it was known in the art at the time the invention was made to seal a gusset end with the double slant as claimed (Fig. 2). The examiner notes that the arrangement taught by Wedi 008 provides a complete seal (18) of the gusset end portion as well as provides a larger expandable space due to less material being folded over, both improvements offering obvious advantages to one of ordinary skill in the art at the time the invention was made. At the time of the invention, it would have been obvious to a person having ordinary skill in the art to fold and seal the gusset end portions taught by Totani in the shape and manner taught by Wedi 008, in order to simplify manufacturing, completely seal the gusset end portion, and provide a larger expandable space while maintaining the advantages taught by all references.

Additionally, it would have been an obvious matter of design choice to make the different portions of the folded ends of whatever form or shape was desired or expedient such as the smaller folded portion taught by Wedi 008. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

The examiner notes the combination recited above teaches all limitations of the claims except results in the elimination of the claimed third welding seam attaching the inner layer to bag wall neighboring the location of the folded gusset ends by moving notch 17 (now unnecessary due to Wedi 008 seal) out of the side seal area.

However, Wedi 837 teaches sealing the ends of a gusset portion with welding seams that extend beyond the top of the gusset ends, connecting the neighboring layers as well, substantially as claimed by the third welding seam (except not on a folded over gusset portion; Fig. 4; 10a). The examiner further notes that extending a seal beyond the opening of layers as shown in Fig. 4 of Wedi 837 improves the sealing characteristics, a desirable improvement clearly obvious to one of ordinary skill in the art at the time the invention was made.

At the time of the invention, it would have been obvious to a person having ordinary skill in the extend the gusset end seal (18) taught by Totani/Wedi 008 beyond the gusset end edges as taught by Wedi 837, in order to close the ends of the gusset portions and attach them to neighboring layers ([0016]). Additionally, because Wedi 837 and Wedi 008 both gusset end seals, it would have been obvious to one of ordinary skill in the art to substitute the larger seal taught by Wedi 837 for the smaller seal taught by Wedi 008 to achieve the predictable result of sealing the gusset end and improving the sealing characteristics. The examiner considers the benefits of the seal extension taught by Wedi 837 to be equally applicable whether the gusset end portion is folded or not.

3. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Totani (US 2004/0258332 A1) in view of Wedi et al. (US 2001/0051008 A1, hereinafter 'Wedi 008') and Wedi et al. (US 2003/0210837 A1, hereinafter 'Wedi 837') as applied above, and further in view of Wedi et al. (US 6,398,412, hereinafter 'Wedi 412').

Totani/Wedi 008/Wedi 837 discloses all the limitations of the claim except for the reclosable closure device being a three layer closure strip having outer layers fused to an inner side of the bag walls and a central layer separable by cohesion fracture, instead disclosing a zipper closure. Wedi 412 discloses that a three layer closure strip having outer layers fused to an inner side of the bag walls and a central layer separable by cohesion fracture are art recognized equivalents to zipper closures (See Figs 3b and 3d). It would have been obvious to one of ordinary skill in the art at the time of invention to create the bag of Totani/Wedi 008/Wedi 837 with a three layer closure strip having outer layers fused to an inner side of the bag walls and a central layer separable by cohesion fracture instead of a zipper closure as taught by Wedi 412 as they are art recognized equivalent closures.

### ***Response to Arguments***

4. Applicant's arguments and affidavits filed 7/19/2011 have been fully considered but they are not persuasive.

Applicant's argument that Totani does not show the top edges of the gussets are closed does not persuade the examiner because that is simply even more motivation for the combination, improving the sealed ends of the bag as noted and maintained in the rejections above.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208

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USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant's argument that the Wedi 008 seal is problematic in a single layer sealable film does not persuade the examiner against the combination because within the cited prior art, the double-sided sealable film is known and simple substitution of one known material for another is generally within the level of ordinary skill in the art, because when in combination the point is moot as the larger seal applied surrounding attaches everything together regardless of whether the inner layers of the fold are sealed to each other or not, and because, as noted in the Wedi declaration, this is only applicable to films developed in recent years and older, known film structures are perfectly capable of the claimed sealing arrangement.

Applicant's argument that Wedi 008 teaches gusset ends that reach freely into the interior of the package and is improper to combine/modify as claimed does not persuade the examiner because whether or not the gusset ends are sealed to the bag walls is a matter of design choice in package making for the desired opening size, gusset end seal strength, etc. and can be varied as desired by the package designer for the desired performance characteristics. Further, the extra strength and sealing characteristics and motivation to combine noted by the examiner in the rejections above remain within the level of ordinary skill at the time the invention was made and applicant's arguments do not address that issue.

For the reasons stated above, as well as those set forth and maintained in the rejections above, the examiner is not persuaded by applicant's arguments and Affidavit filed 7/19/2011 and the rejections are maintained.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER HELVEY whose telephone number is (571)270-1423. The examiner can normally be reached on M-Th 8:00 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. H./  
Examiner, Art Unit 3782

November 5, 2011

/NATHAN J NEWHOUSE/  
Supervisory Patent Examiner, Art Unit 3782